

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100159
	:	TRIAL NO. B-0809237-A
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MARKEITH ENGLAND,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Markeith England appeals his convictions for two counts of aggravated robbery and a firearm specification. Because we conclude that his assignments of error are without merit, we affirm the judgment of the trial court.

In the early morning hours of November 19, 2008, England and two companions, Antonio Poellnitz and Brandon McClinton, left Sneaky Pete’s bar in Lockland, Ohio. About the same time, Abou Thiam and Aliou Ly were also leaving Sneaky Pete’s and walking towards home. Thiam noticed a gold, four-door car slowly drive past him and Ly, and then the car parked at a gas station. Thiam testified that the car then drove past him and Ly again, but this time the headlights on the car were turned off. The car then pulled into the lot of a post office and parked. Two people got out of the car and came running toward Thiam and Ly, and

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

one of them pulled a gun and put it against Thiam's head. The person told Thiam to give him everything he had. The same was done to Ly. Thiam gave up his wallet, glasses, necklace, and cellular phone. Ly gave up money and chains, but he managed to keep his cellular phone. The victims testified that the driver of the car yelled, "Let's go," at which time one of the robbers told the victims to start running or they would be killed. The two robbers then ran back to the car, and the car drove away.

Thiam and Ly called the police, and because the Lockland police station was nearby, it only took the police a few minutes to arrive on the scene. Lockland Police Sergeant Patrick Sublet was one of the responding officers, and he began the search for the suspects in the gold, four-door vehicle. Only minutes later, Sergeant Sublet spotted a car fitting the victims' description. Sergeant Sublet stopped the car in which England was driving and Poellnitz and McClinton were passengers. Sergeant Sublet found Thiam's wallet in the backseat of the car, McClinton wearing Ly's chain necklace, and Thiam's necklace in England's pocket. A loaded .380 Taurus gun was under the driver's seat.

England was indicted on two counts of aggravated robbery in violation of R.C. 2911.01(A)(1) and two counts of robbery in violation of R.C. 2911.02(A)(2), with firearm specifications accompanying both aggravated-robbery counts. After a bench trial, the trial court found England guilty on all counts. At the sentencing hearing, the trial court merged the aggravated-robbery and robbery counts, so that England was sentenced on two counts of aggravated robbery and one three-year gun specification.

In his first assignment of error, England asserts a denial of due process when the prosecutor engaged in misconduct by asking leading questions on direct examination of Thiam and Ly. Because England failed to object to the prosecutor's

leading questions at trial, we review the alleged misconduct for plain error.<sup>2</sup> Plain error will not be found unless, but for the error, the outcome of the trial clearly would have been otherwise.<sup>3</sup>

Under Evid.R. 611(C), “[l]eading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’s testimony.” Nevertheless, “the trial court has discretion to allow leading questions on direct examination.”<sup>4</sup> The record in this case shows that the prosecutor asked leading questions of Thiam and Ly on direct examination; however, neither Thiam nor Ly were native English speakers, and Ly required an interpreter. More importantly, England does not assert, nor does the record reveal, how the outcome of the trial would have been different in the absence of such leading questions. Therefore, we overrule England’s first assignment of error.

In his second and third assignments of error, England challenges the weight and sufficiency of the evidence adduced to support his convictions. To reverse a conviction for insufficient evidence, we must conclude that no rational trier of fact, after viewing the evidence in a light most favorable to the prosecution, could have found that the state had proved all elements of the crimes beyond a reasonable doubt.<sup>5</sup> By contrast, appellate review of the weight of the evidence puts the appellate court in the role of a “thirteenth juror.”<sup>6</sup> Thus, we must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether

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<sup>2</sup> *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, 802 N.E.2d 643, ¶14.

<sup>3</sup> *State v. Long* (1978), 53 Ohio St.2d 91, 97, 372 N.E.2d 804.

<sup>4</sup> *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, ¶149.

<sup>5</sup> *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

<sup>6</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding England guilty.<sup>7</sup>

Based upon the facts we have already noted, the other evidence presented at trial, and a thorough review of the record, we cannot say that no rational trier of fact could have found England guilty of the crimes beyond a reasonable doubt. Furthermore, we cannot say that the trial court clearly lost its way and created a manifest miscarriage of justice in finding England guilty. Therefore, England's second and third assignments of error are overruled.

Finally, without advancing a separate assignment of error, England requests that his merged allied-offense convictions be overturned. England's request is procedurally improper under Loc.R. 6. Furthermore, England fails to argue precisely how the trial court erred. After reviewing the record, the trial court merged the robbery counts under R.C. 2911.02(A)(2) with the aggravated-robbery counts under R.C. 2911.01(A)(1), and thus England was sentenced for two separate aggravated robberies—one for each victim. Thus, England's request is without merit.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and FISCHER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on January 26, 2011  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>7</sup> Id.